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P/3704-5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Steven Barritz, et al.

Date: December 21, 2006

Serial No.: 09/766,438

Group Art Unit: 3622

Filed: January 19, 2001

Examiner: Khanh H. Le

For: A SYSTEM AND METHOD FOR ESTABLISHING INCENTIVES FOR  
PROMOTING THE EXCHANGE OF PERSONAL INFORMATION AND  
TARGETED ADVERTISING

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Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**AMENDED APPEAL BRIEF PURSUANT TO 37 C.F.R. §1.192  
IN RESPONSE TO THE NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Sir:

This appeal is taken from the final action mailed June 6, 2005. In support of the Notice of Appeal filed October 6, 2005, this amended Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief mailed on December 1, 2006. It is respectfully submitted that this amended Appeal Brief complies with all of the requirements of 37 C.F.R. §41.37.

**I. REAL PARTY IN INTEREST:**

The real party in interest in the above-identified application is: Treetop Ventures, LLC.

**II. RELATED APPEALS AND INTERFERENCES:**

There are no related appeals or interferences of which applicants are aware regarding the above-identified application.

### **III. STATUS OF CLAIMS:**

Claims 1-4, 6, 8-20, 22-42 stand rejected by the Examiner under 35 U.S.C. §103.

Claims 5, 7 and 21 have been canceled.

### **IV. STATUS OF AMENDMENTS:**

A response to the final Office Action and a Petition for a One Month Extension of Time was filed on September 7, 2005. A Notice of Appeal was filed on October 6, 2005. An Advisory Action was mailed on November 16, 2005. The Advisory Action indicates that the 35 U.S.C. §112, second paragraph rejections of claims 1 and its dependencies have been overcome. In addition, the Examiner entered the amendments to claim 1.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER:**

With reference to Figs. 1-3 and according to claim 1, the invention recites a public broadcasting system 10. System 10 includes a facility (e.g., gathering device 34) for collecting viewers' profile data 25 (see paragraphs 80-83). The profile data 25 is used for controlling program and advertisement content delivery to customers. The system also includes a facility for providing the viewer profile data 25 to a program and advertising content controlling facility. A content selector 20 is also included that provides to viewers program content (see paragraph 57). Furthermore, an advertising inserter (e.g., interface 22) is provided which selects alternate advertising that is intended to selectively replace or supplement commonly provided advertising content, based on the viewer profile data (see paragraph 86). Further, the system 10 includes a facility that sets rewards to viewers based on criteria that is associated with the viewer profile data 25 (see paragraphs 41-46). Further, a control is provided which responds to the rewards set by the rewards facility, in a manner which adjusts the durations of the program content and the durations of the advertising content being provided to the various viewers based on their respective viewer profile data 34 (see paragraphs 47-48).

With continued reference to Figs. 1-3 and according to claim 39, a public, over the air, broadcasting system is provided (see paragraph 79-83). This broadcasting system involves broadcasting "live program content 56 divided into segments with intervals separating the segments and advertising content 60 provided in the intervals." The system comprises "a

broadcasting facility for broadcasting the live program content over the air” and the “plurality of receiving devices” that receive and play the live content of viewers substantially without delay (see paragraphs 65-68). Claim 39 further defines a “respective advertising player 22 that includes “a facility for receiving and pre-storing the advertising content” (see paragraph 85). Moreover, an “advertising content inserter” that is “responsive to viewer profile information 25 inoperable with the advertising player 22” for “dynamically and interactively inserting portions of the pre-stored advertising content into the live program content” (see paragraphs 64 and 86). The advertising content inserter operates “in a manner that the pre-stored advertising content and the live program content are presented in integrated form to the viewer, and based on the viewer profile information 25” (see paragraphs 80-86).

#### **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:**

The following grounds of rejection are presented for review:

1. Whether claims 1-4, 6, 8, 10-14, 17-19, 22, 24-26, 28, 31-32, 34, 36, 37, and 39-41 are unpatentable under 35 U.S.C. §103(a) over Wachob (5,155,591) in view of Logan et al. (“Logan,” 5,721,827). Further, whether claims 15, 16, 20, 27, 29-30, 33, 35, 38, 40 and 42 are unpatentable under 35 U.S.C. §103(a) over Wachob and Logan as applied to claim 14, and further in view of Herz et al. (“Herz,” 6,088,722).

#### **VII. ARGUMENT:**

##### Rejection under 35 U.S.C. §103(a) under Wachob in view of Logan

The primary reference, Wachob, is but one example of the variety of systems which comprise a “method and apparatus for providing demographically targeted television commercials.” There is no disclosure in this primary reference of any intent to provide or control the dissemination of targeted television commercials based on any “reward” criteria or mechanism. The criteria used by the facility that sets rewards to those who provide viewer profile information is designed to increase the level of rewards based on both the quality and quantity of information provided by the viewer. In this manner, targeting of advertising can be very much improved.

As specifically recited in claim 1, the rewards include setting the “durations of advertising content” in some relationship to the rewards that have been set. This might be reducing the durations of the advertising substantially, which would result in less annoyance to viewers.

Wachob does not teach or suggest such system. It sets no “rewards” and it cannot alter the duration of an advertisement to suit a level of rewards which have been set for a particular viewer or a group of them.

Logan, the secondary reference, generically describes an audio program and message distribution system in which subscribers pay money as a subscription fee for various program content. Logan offers its subscribers an opportunity to offset the subscriber fee by electing to receive advertisements in the content. There is no disclosure in this secondary reference of tie-in with television advertising or intertwining a reward with the durations of television or broadcast commercials. Further, there is no disclosure regarding adjusting the duration of television or broadcast commercials in relation to the content otherwise provided by the viewer.

The most recent Office Action (which is directly cited in the Advisory Action) generically states (at the second paragraph on page 5 thereof) that Logan’s system “sets rewards to viewers based on ... criteria[.]” However, Logan’s system is not about rewards. Instead, it is about substituting advertisement content for monetary payments. Unlike applicant’s claim 1, all of the content described in Logan is based on a paid subscription, and each user receives content in return for the subscription fee. In lieu of paying the subscription fee, Logan adds advertisements to the program content. Therefore, in contradistinction to the Examiner’s characterization of Logan, there is no reward and there is no programming content that is provided for “free.” Instead, users pay for program content either by agreeing to receive advertisements, or by tendering money. Furthermore, unlike applicant’s claim 1, Logan does not regard the quality and quantity of information. Instead, it is about money.

Applicant submits that Logan’s quid pro quo system enables users to pay in part for a subscription to program content by agreeing to receive advertising content. In particular, a variety of accounting and analysis reports and billing functions are taught that identify payment for receiving content in terms of usage and the cost or credit attributed to a particular program vis-a-vis a subscription fee or reception of advertising content (see column 26, lines 5-8, and column 26, lines 53-column 27, line 27). Detailed billing records indicate the precise extent to

which “advertising was actually presented” and advertisers pay only for advertising known to have been “effectively delivered.” Therefore, the system in Logan teaches a complex accounting structure which is based on payment that is conditionally received from advertisers (based upon a user’s agreement and the user’s subscription fees).

For the foregoing reasons, the prior art of record would not lead one of ordinary skill in the art to the invention of claim 1. Claims 4, 6, 8, 10-14, 17-19, 22, 24-26, 28, 31-32, 34, 36, and 37 depend directly or indirectly from claim 1, and are, therefore, patentable for the same reasons as well because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Applicant further submits that claim 39, which defines patentably similar features of claim 1, is also distinguishable and patentable over the combination of Wachob and Logan. In particular, applicant’s claim 39 public “over the air, broadcasting system” divides “live program content” into segments with intervals. In the intervals, advertising content is provided. A “respective advertising player [is] coupled with and located at a corresponding one of [a plurality of] receiving devices.” The advertising player includes a facility “for receiving and pre-storing the advertising content.” Further, claim 39 defines “an advertising content inserter” that is operable with the advertising player and a receiver for “dynamically and interactively inserting portions of the pre-stored advertising content into the live program content.” Neither Wachob or Logan teach or suggest this combination of features. In particular, Wachob does not teach or suggest any advertising player that is “coupled with and located at a corresponding” receiving device. Instead, Wachob defines “determining when a commercial message break is about to occur” and providing “an appropriate commercial message during the break” (column 2, lines 7-23). According to Wachob, a “headend [broadcaster] transmits a plurality of alternate commercial message channels for use by [a] selection means.” Using a “commercial interface matrix/controller” 64, a “cable system operator,” and not an advertising player that is located at a receiver, provides “a plurality of alternate commercial message channels, each of which is scrambled and encoded as necessary by scrambler/encoder 66b-n, which in turn output the commercial message channels to television modulator 68b-n” (see column 9, lines 40-50). Thus, unlike applicant’s claim 39, Wachob teaches the broadcasting facility outputting respective commercial channels to receivers.

Applicant's claim 39 defines an advertising player that is "located" at a receiving device, and includes a "facility for receiving and pre-storing the advertising content." This is a patentably distinct feature that is not taught or suggested anywhere in Wachob. Furthermore, Logan does not supply the elements of applicant's claim 39 that are missing from the teachings of Wachob. In particular, Logan does not teach or suggest an advertising player that is coupled with and located at a corresponding one of a plurality of receiving devices that includes a facility for receiving and pre-storing advertising content. Therefore and for the aforementioned reasons, the prior art of record would not lead one of ordinary skill in the art to the invention of applicant's claim 39. In particular, Wachob and Logan, taken alone or in combination, do not teach or suggest all of the features of applicant's claim 39.

Rejection under 35 U.S.C. §103(a) under Wachob and Logan and further in view of Herz

Applicant submits that claims 15, 16, 20, 27, 29-30, 33, 35 and 38, which stand rejected as obvious in view of Wachob, Logan and Herz are also patentable. Herz defines scheduling broadcast and access to video programs and other data as a function of customer profiles, does not supply the elements missing from applicant's claim 1 that are missing from the teachings of Wachob and Logan. In particular, Herz does not teach or suggest intertwining a reward with the duration of television or broadcast commercials. Further, there is no disclosure regarding adjusting the duration of television or broadcast commercials in relation to the content otherwise provided by the viewer. Therefore, claims 15, 16, 20, 27, 29-30, 33, 35 and 38, which depend directly or indirectly from claim 1 are patentable as well because of the combination of features in those claims with the features set forth in the claim(s) from which they depend.

Further, Herz, which defines scheduling broadcast and access to video programs and other data as a function of customer profiles, does not supply the elements missing from applicant's claim 39 that are missing from the teachings of Wachob and Logan. Therefore, claims 40 and 42, which are rejected under 35 U.S.C. §103(a) as being unpatentable over Wachob and Logan, and further in view of Herz, are allowable for the same reasons. The remaining ones of the claims which depend on claim 39 include all of its limitations and impose further limitations thereon which distances each of them even further from the prior art.

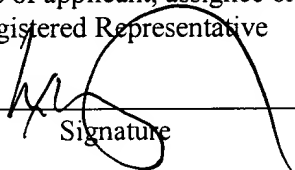
**VIII. CONCLUSION:**

Check No. 22809 in the amount of \$250.00 (small entity) to cover the fee for filing an Appeal Brief was previously submitted on December 6, 2005. Any additional fees or charges required at this time in connection with this application may be charged to Patent and Trademark Office Deposit Account No. 15-0700.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on December 21, 2006:

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Max Moskowitz

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Name of applicant, assignee or  
Registered Representative

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Signature

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December 21, 2006

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Date of Signature

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Respectfully submitted,

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## **CLAIMS APPENDIX**

1. A public broadcasting system, the system comprising:  
a facility for collecting viewers' profile data that is used for controlling program and advertisement content delivery to customers;  
a facility for providing the viewer profile data to a program and advertising content controlling facility;  
a content selector that provides to viewers program content;  
an advertising inserter which selects alternate advertising that is intended to selectively replace or supplement commonly provided advertising content, based on the viewer profile data;  
a facility that sets rewards to viewers based on criteria that is associated with the viewer profile data provided by viewers; and  
a control which responds to the rewards set by the rewards facility, in a manner which adjusts the durations of the program content and the durations of the advertising content being provided to the different ones of said viewers based on their corresponding viewer profile data.

2. The system of Claim 1, in which the broadcasters include point-to-one broadcasters.

3. The system of Claim 1, in which the broadcasters include point-to-few broadcasters.

4. The system of Claim 1, in which the broadcasters include point-to-many broadcasters.

Claim 5 (canceled).

6. The system of Claim 1, in which the rewards comprise modifications to the commonly provided advertising content.

Claim 7 (canceled).



8. The system of Claim 1, in which the rewards comprise the provision of different types of advertisements.

9. The system of Claim 1, in which the rewards comprise the replacement of the commonly provided advertising content with brief program material.

10. The system of Claim 1, in which the rewards comprise the selection of advertising that are tailored to viewers, based on the viewers' profile information.

11. The system of Claim 1, in which the viewers profile data is provided by viewers in accordance with different levels of specified viewer profile detail so as to enable providing different reward levels.

12. The system of Claim 1, in which insertion of the alternate advertising is effected at an interface facility.

13. The system of Claim 12, in which the interface facility is a central facility which is operated outside of viewers' homes.

14. The system of Claim 12, in which the interface device is a gathering device.

15. The system of Claim 14, in which the gathering device incorporates internal cellular telephone circuitry that automatically communicates with the broadcasters.

16. The system of Claim 15, in which internal cellular telephones associated with a plurality of viewers are operated as party line telephones.

17. The system of Claim 14, in which the gathering device comprises internal storage for storing program content and a facility that plays program content after a delay.

18. The system of Claim 12, in which the interface facility comprises a device located in the home of the viewer.

19. The system of Claim 18, in which the device is selected from a group consisting of: settop box, descrambler, VCR, GD, PTV, television receiver, Web browser and Internet appliance.

20. The system of Claim 1, in which the broadcasters comprises a Web TV deliverer or a real television or a video-on-demand provider.

Claim 21 (canceled).

22. The system of Claim 1, in which the rewards comprise a reduction in the frequency of television commercials.

23. The system of Claim 1, in which the rewards comprise a combination of advertisements in advertising pods.

24. The system of Claim 1, in which the rewards comprise the playing of only such commercials that are matched with the viewers' profile data.

25. The system of Claim 1, in which the viewer profile information is communicated to broadcasters via viewer responses to questionnaires.

26. The system of Claim 18, in which the viewer profile information is communicated to broadcasters via remote controller messages transmitted to the respective interface facility located at the respective homes of the viewers.

27. The system of Claim 1, in which the viewer profile information is communicated to the broadcasters via the Internet.

28. The system of Claim 1, in which the viewer profile information is communicated to the broadcasters through authorized release of data from financial institutions.

29. The system of Claim 1, including a facility that selects either the program content or the alternate advertising by means of a server database.

30. The system of Claim 1, including a facility that selects either the program content or the alternate advertising by downloading over the Internet.

31. The system of Claim 1, including a facility that selects either the program content or the alternate advertising by Cable TV or satellite signals transmitted to addressable converters.

32. The system of Claim 1, including a facility that selects either the program content or the alternate advertising by signals transmitted over the air.

33. The system of Claim 1, further including an encryption software that encrypts viewers' profile information provided by viewers.

34. The system of Claim 1, further including a facility that identifies viewers who are actually viewing program content.

35. The system of Claim 34, in which the facility that identifies viewers includes a voice recognition facility.

36. The system of Claim 34, in which the facility that identifies viewers' includes a facility that detects viewers' presence near a television set.

37. The system of Claim 34, in which the facility that identifies viewers' includes a remote controller device operable by the viewers.

38. The system of Claim 1, further including a central entity that manages viewer profile information in a manner that protects the confidentiality of viewers identities from the broadcasters.

39. A public, over the air, broadcasting system involving broadcasting of live program content divided into segments with intervals separating the segments and advertising content provided in the intervals, the system comprising:

a broadcasting facility for broadcasting the live program content over the air and a plurality of receiving devices for receiving the live program content and for playing the live program content to viewers substantially without delay;

a respective advertising player coupled with and located at a corresponding one of the receiving devices, the advertising player including a facility for receiving and pre-storing the advertising content; and

an advertising content inserter responsive to viewer profile information and operable with the advertising player and the corresponding receiver for dynamically and interactively inserting portions of the pre-stored advertising content into the live program content being provided to a viewer, in a manner that the pre-stored advertising content and the live program content are presented in integrated form to the viewer, and based on the viewer profile information.

40. The system of the Claim 39, further including an interface facility that enables viewers to provide viewer profile data to broadcasters.

41. The system of Claim 40, further including a facility in the advertising content inserter that selects segments from the pre-stored advertising to be inserted in the live broadcast based on viewer profile data of respective viewers.

42. The system of Claim 39, in which the broadcasters include a radio broadcaster.

## **EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.